

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JANE FENG,

Plaintiff and Appellant,

v.

DAVID J. YANG,

Defendant and Respondent.

A155644

(City & County of San Francisco  
Super. Ct. No. CGC17556549)

**MEMORANDUM OPINION<sup>1</sup>**

Plaintiff and appellant Jane Feng, appearing in propia persona, appeals from an order denying her motion to vacate a judgment. For reasons discussed below, we grant defendant and respondent David Yang's motion to dismiss the appeal.

This is yet one more appeal in Feng's long-running dispute with Yang, her former attorney.<sup>2</sup> This latest appeal stems from a January 18, 2017 complaint Feng filed against Yang asserting a single cause of action for fraud. On March 28, 2017, the trial court granted Yang's motion to strike Feng's complaint on anti-SLAPP grounds under Code of Civil Procedure section 425.16, ruling that the fraud cause of action arose from protected

---

<sup>1</sup> We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

<sup>2</sup> The history of this dispute is set forth in this Court's previous unpublished opinions *Feng v. Yang* (Mar. 1, 2017, A144961 [nonpub. opn.]), *Feng v. Yang* (Sept. 11, 2018, A151623 [nonpub. opn.]), and *Feng v. Yang* (Feb. 6, 2019, A151161 [nonpub. opn.]).

activity. The order granting Yang's motion was entered April 3, 2017, from which Feng timely appealed in *Feng v. Yang*, Case No. A151619.

On January 19, 2018, after providing Feng an opportunity to cure defects in her opening brief, we dismissed Feng's appeal in A51619 on our own motion on the grounds that Feng failed to advance any pertinent or intelligible legal argument. After denying Feng's motion to vacate the dismissal and reinstate the appeal, we issued our remittitur on March 22, 2018.

On June 7, 2018, the trial court noted that "[a]n appealable order" is not a judgment and ordered Yang "to file judgment following order granting motion to strike." On July 18, 2018, the court entered judgment in favor of Yang and ordered that Feng take nothing by way of her complaint. Feng moved to vacate the judgment, requesting the court "withdraw Defendant's order [it] gave Defendant on March 28, 2017." On August 30, 2018, following a contested hearing, the trial court denied Feng's motion to vacate the July 18, 2018 judgment due to Feng's "fail[ure] to provide any legal basis for vacating the judgment." On September 12, 2018, Feng appealed the court's August 30, 2018 order. Yang moves to dismiss the appeal, and Feng has filed no opposition.<sup>3</sup>

Generally, an order made after judgment is appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). However, an order denying a motion to vacate a judgment normally is not appealable. (*Martin v. Johnson* (1979) 88 Cal.App.3d 595, 603.) As explained in Witkin: "The denial of a motion to vacate a prior judgment or order is an order after final judgment that affects the judgment and therefore can be appealable under certain special circumstances. [Citation.] However, these circumstances are rare; most of the orders are not appealable for compelling reasons: [¶] (1) If the prior judgment or order was appealable, and the grounds on which vacation is sought existed before entry of judgment, the correctness of the judgment should be reviewed on an appeal from the judgment itself. To permit an appeal from the order refusing to vacate would give the aggrieved party two appeals from the same decision or,

---

<sup>3</sup> Feng's failure to file an opposition to Yang's motion to dismiss the appeal is also a basis to dismiss her appeal. (Cal. Rules of Court, rule 8.54(c).)

if the party failed to take a timely appeal from the judgment, an unwarranted extension of time starting from the subsequent order.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 197, pp. 273–274; *Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1082.)

This is the situation described above. On March 28, 2017, the trial court granted Yang’s motion to strike the single cause of action asserted in Feng’s operative complaint. Feng appealed from that order. This Court dismissed the appeal and issued remittitur. After judgment on Yang’s motion to strike was entered following our remittitur, Feng moved to vacate the judgment seeking again to have the March 28, 2017 order withdrawn. In this appeal, she seeks to reverse the order denying her motion to vacate, but it is clear this appeal raises the same issues and challenges the same order as the appeal (A151619) we previously decided. She is not entitled to a second appeal of the same order.

None of the exceptions to the general rule that an order denying a motion to vacate a judgment is a nonappealable order apply. Such an order may be appealable if (1) there is no effective appeal from the judgment, (2) the appellant was not an original party to the action, (3) the motion to vacate is authorized by statute, or (4) the motion seeks to vacate a void judgment. (9 Witkin, Cal. Procedure, *supra*, Appeal §§ 198-201, pp. 274-278.) Feng has filed no opposition, and therefore has not advanced any arguments in support of an exception. Moreover, no exception applies. Feng appealed the correctness of the trial court’s order striking her complaint. She was an original party to that action. We are aware of no statute authorizing the motion to vacate, nor is there a basis to deem the court’s earlier order void. The order denying Feng’s motion to vacate fell squarely within the general rule that such orders are not appealable.

Finally, it is of no moment that Feng’s earlier appeal (A151619) was from an order granting a motion to strike. An order granting a motion to strike is appealable as a final judgment if it removes the only cause of action alleged and leaves no issues to be determined. (See *Walnut Producers of Calif. v. Diamond Foods, Inc.* (2010) 187 Cal.App.4th 634, 641.) In establishing when after entry of judgment a notice of appeal must be filed, the California Rules of Court provide that a “ ‘judgment’ includes an

appealable order if the appeal is from an appealable order.” (Cal. Rules of Court, rule 8.104(e).) The court’s March 28, 2017 order granting Yang’s motion to strike was appealable as a final judgment as it disposed of Feng’s entire complaint.<sup>4</sup> The subsequent judgment entered on the order granting Yang’s motion did not give Feng another opportunity to appeal.

In light of our decision, we do not address Yang’s argument that this appeal is time-barred.

### **DISPOSITION**

The appeal is dismissed. Yang shall recover his costs on appeal.

---

<sup>4</sup> In addition, a direct appeal lies from an order granting a Code of Civil Procedure section 425.16 motion to strike a SLAPP cause of action. (See Code Civ. Proc., §§ 425.16, subd. (j), 904.1, subd. (a)(13).)

---

Siggins, P.J.

WE CONCUR:

---

Fujisaki, J.

---

Petrou, J.

*Feng v. Yang*, A155644